MICHIGAN SUPREME COURT

Office of Public Information

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FOR IMMEDIATE RELEASE

SUPREME COURT TO HEAR FIRST ORAL ARGUMENTS OF 2003-2004 TERM

LANSING, MI, October 13, 2003 – Sixteen cases, including a school funding dispute, will be heard by the Michigan Supreme Court this week in the first oral arguments of the Court's 2003-2004 term.

As in past years, the Court will hear the first case of the term in the Old Courtroom in the Capitol. The Court will then adjourn and resume hearing oral arguments at its courtroom on the sixth floor of the Michigan Hall of Justice.

Among the cases the Court will hear is *Adair v. State of Michigan*, in which a number of school district and taxpayers sued the state of Michigan over school funding issues. The plaintiffs' appeal asks the Michigan Supreme Court to reverse an unfavorable ruling by the Michigan Court of Appeals, which dismissed the suit in a 2-1 decision. The Court of Appeals found that most of the claims had already been addressed in the Supreme Court's 1997 decision in *Durant v. State of Michigan*.

Seven criminal cases will be heard by the Court. Other cases before the Court feature insurance, environmental, personal injury, court procedure, and constitutional issues.

Court will be held **October 14, 15 and 16.** Court will convene at **9:30 a.m.** each day.

(*Please note: The summaries that follow are brief accounts of complicated cases and might not reflect the way in which some or all of the Court's seven Justices view the cases. The attorneys may also disagree about the facts, the issues, the procedural history, or the significance of their cases. For further details about these cases, please contact the attorneys*.)

Tuesday, October 14
Morning session, Old Courtroom, Capitol Building, 9:30 a.m.

PEOPLE v. MCNALLY (case no. 120021)
Prosecuting attorney: John S. Pallas/(248) 858-0656
Attorney for defendant Stephen J. McNally: Marla R. McCowan/(313) 256-9833
Attorney for amicus curiae Prosecuting Attorneys Association of Michigan: Timothy A. Baughman/(313) 224-5792
Trial court/judge: Oakland County Circuit Court/Hon. Rudy J. Nichols

At issue: May the prosecution point of the defendant's failure to volunteer information to the police at the time of his arrest, if an ordinary citizen could be expected to do so, even though the defendant was under no compulsion to speak?
Background: Late one night, Stephen McNally was driving in his truck with Harold VanDorn. The two men had met in a bar earlier that evening and both were intoxicated. An altercation developed and they exchanged punches. VanDorn got out of the truck and started walking. McNally drove a short distance away from VanDorn, made a U-turn, and then accelerated in VanDorn's direction. At a speed of approximately 45 mph, McNally drove the truck over the centerline and ran over VanDorn, killing him. McNally was arrested and prosecuted for murder. At a trial before Oakland County Circuit Judge Rudy J. Nichols, McNally claimed that the homicide was unintentional and was caused by a mechanical failure which caused him to lose control of the truck. The prosecutor, in questioning the arresting officer, elicited testimony that, at the time of arrest, McNally did not volunteer that the homicide was an accident caused by a mechanical failure of the truck. The prosecutor argued that an ordinary citizen normally would have spoken out at the time of arrest if the homicide truly was an accident. The jury found McNally guilty of second-degree murder and failure to stop at the scene of a serious injury accident. He was sentenced to concurrent prison terms of 20 to 50 years for murder and 2 to 5 years for failure to stop. McNally appealed. He argued in part that his constitutional rights to a fair trial and due process were violated. By bringing out McNally's failure to speak when he was arrested, the prosecutor violated McNally's privilege against self-incrimination, McNally contended. The Court of Appeals affirmed the conviction in an unpublished per curiam opinion. McNally appeals.

Morning session continues; Court will reconvene at the Michigan Hall of Justice, 11:00 a.m.

PEOPLE v. GRANT (case no. 119500)
Prosecuting attorney: David L. Morse/(517) 546-1850
Attorney for defendant William Cole Grant: Susan M. Meinberg/(313) 256-9822
Trial court/judge: Livingston County Circuit Court/Hon. Daniel A. Burress
At issue: The defendant was convicted of criminal sexual conduct with a young girl. He argues that he is entitled to a new trial on the basis of newly discovered evidence. The girl's aunt came forward to say that her sons had witnessed a bicycle accident that could have accounted for injuries to the girl's genital area. The defendant also argues that his trial counsel was ineffective because the attorney did not produce witnesses to the bicycle accident.
Background: Defendant William Cole Grant was charged with three counts of criminal sexual conduct involving his girlfriend's niece. The child's father took her to see a doctor after she suffered injuries to her genital area; the child, who was then eight years old, told the doctor that she had been injured in a bicycle accident. At trial, the doctor testified that the injury was also consistent with sexual abuse. A second doctor who testified at trial reported that the child told her she had been abused by Grant. The child also testified that Grant abused her, caused her to bleed from the vagina, and instructed her to say that her injuries were caused by a bicycle accident. Defense counsel pointed to inconsistencies between the child's testimony and her statements to police. The jury convicted defendant as charged of one count of first-degree criminal sexual conduct and two counts of second-degree criminal sexual conduct. Grant sought a new trial based on newly discovered evidence. He submitted letters from the child's grandparents, two aunts, and an uncle by marriage, who stated that the child got her knowledge

of sex from pornographic films shown to her by her father. They also advanced the theory that the child's father wanted to get Grant out of the way because he was in love with Grant's girlfriend. In addition, one of the aunts had separately informed counsel that her two sons had witnessed the bicycle accident. Grant contended that his counsel was ineffective, in part because the attorney failed to interview and call exculpatory witnesses. The trial judge denied the motion for new trial, saying that the bicycle accident had been adequately raised for the jury. The judge also stated that the evidence might not be newly discovered. Grant appealed. The Court of Appeals affirmed the trial judge's rulings. Grant appeals.

Afternoon session

ADAIR v. STATE OF MICHIGAN (case no. 121536)
Attorney for plaintiffs Daniel Adair and Fitzgerald Public Schools: Dennis R. Pollard/(248) 258-2850
Attorneys for defendants State of Michigan, Department of Education, Department of Management and Budget, and Treasurer of the State of Michigan: Thomas L. Casey/(517) 373-1124, Jane Wilensky/(517) 373-1116
Attorneys for amicus curiae Michigan Education Association: James A. White, Kathleen Corkin Boyle, Timothy J. Dlugos/(517) 349-7744
Lower court: Michigan Court of Appeals (filed with the Court of Appeals as an original action)
At issue: Does the legal doctrine of res judicata prevent school districts that were parties in *Durant v. State of Michigan*, 456 Mich 175 (1997), from suing on their school funding claims in a new lawsuit? Are school districts that were not parties to Durant I barred from suing by releases in resolutions they adopted following the *Durant* decision? Are certain recordkeeping and transmittal requirements, which were created by legislation after Durant I, new or increased levels of activities or services under the Michigan Constitution?
Background: *Durant v. State of Michigan* ("Durant I") was a lawsuit started by school districts and representative taxpayers against the State of Michigan. The plaintiffs filed an original action in the Court of Appeals, contending that the state was violating the first sentence of the Michigan Constitution, article 9, section 29. That section provides that "The state is hereby prohibited from reducing the state financed proportion of the necessary cost of any existing activity or service required of units of Local Government by state law." The plaintiffs sought a declaratory judgment that the State of Michigan and various state departments disobeyed the constitutional mandate by reducing the amount of annual increases for school funding. Ultimately, in a 1997 ruling, the Supreme Court awarded back payments for special education funding.

In *Adair*, a group of school districts and taxpayers of those districts filed suit in the Court of Appeals. They alleged that the state, through regulations, executive orders, and changes in statutory law, increased the level of activities and services required of Michigan school districts without funding. In a published 2-1 opinion, the Court of Appeals dismissed the case. The Court of Appeals majority held that, as to school districts that were parties to Durant I, the doctrine of res judicata prevented pursuit of all but one of the allegations of non-funding. The majority said that those claims had already been addressed in Durant I. The plaintiffs argue that res judicata does not apply because they are not pursuing the same claims addressed in Durant I and they are proceeding under a different theory.

The Court of Appeals majority also stated that school districts that were not parties to Durant I received payments from the state equivalent to the recovery granted in Durant I, and

released all liability for "claims or potential claims [which] are or were similar to the claim asserted by plaintiffs" in Durant I. The release barred school districts that did not participate in Durant I from pursuing all but one of their non-funding allegations in *Adair*, the majority said.

The remaining non-funding claim was that certain recordkeeping and transmittal requirements, which were created by legislation after Durant I, had to be fully funded by the state. The Court of Appeals majority rejected that claim, saying that the recordkeeping and the transmittal of information functions did not compel new or increased levels of activities or services within the meaning of Const. 1963, art. 9, sec. 23.

The plaintiffs appeal.

PEOPLE v. NUTT (case no. 120489)
Prosecuting attorney: Danielle DeJong/(248) 858-0656
Attorney for defendant Melissa Ann Nutt: Daniel G. Van Norman/(810) 667-3601
Attorney for amicus curiae Prosecuting Attorneys Association of Michigan: Timothy A. Baughman/(313) 224-5792
Trial court/judge: Oakland County Circuit Court/Hon. David F. Breck
At issue: The defendant was charged with stealing firearms in Lapeer County. Later, she was also charged in Oakland County with possessing the stolen firearms. Do the two charges amount to double jeopardy?
Background: Melissa Ann Nutt broke into a home in Lapeer County. Nutt was charged with home invasion and larceny; she pled guilty to one count of home invasion. Later, Nutt was charged in Oakland County with possession of the firearms that had been stolen from the Lapeer County house. After Nutt was bound over on the charges, the trial court dismissed the possession charge because of double jeopardy concerns. The prosecutor appealed. In an unpublished per curiam opinion, the Court of Appeals reversed the trial court by a 2-1 vote. Each judge on the panel wrote separately. The lead opinion, written by Judge Patrick M. Meter, concluded that, because different transactions were involved, there was no double jeopardy violation. In a concurring opinion, Judge Joel P. Hoekstra found that there was a continuous time sequence -- a single transaction -- but concluded that the home invasion and receiving and concealing stolen firearms offenses did not display a single intent and goal. Accordingly, Nutt's double jeopardy claims had to fail, the judge said. Judge William C. Whitbeck, dissenting, agreed with Judge Hoekstra that there was a single transaction involved in both offenses, but said there could be a single prosecution for both offenses. As a result, double jeopardy barred the second prosecution, Judge Whitbeck concluded. Nutt appeals.

PEOPLE v. MCGEE (case nos. 120157, 120185)
Prosecuting attorney: Thomas R. Grden/(248) 858-0656
Attorney for defendant William C. McGee: Neil J. Leithauser/(248) 680-4661
Trial court/judge: Oakland County Circuit Court/Hon. Jessica R. Cooper
At issue: The trial judge declared a mistrial on her own motion after she learned that a dismissed juror, who had been excused before the case went to the jury, was with the jury during deliberations. The judge then recalled the jury and reinstated the verdict. Was there manifest necessity for the mistrial? Would a retrial amount to double jeopardy?
Background: Defendant William C. McGee was convicted in a jury trial of two counts of delivery of less than fifty grams of cocaine, one count of delivery of an imitation controlled substance, and one count of delivery of fifty grams or more but less than 225 grams of cocaine.

He challenged his conviction, claiming that he was entitled to a new trial because the trial judge reinstated the jury verdict after declaring a mistrial. The judge declared the mistrial on her own motion after learning that a dismissed juror, who was excused after the judge instructed the jury, had been in the jury room during deliberations. When the parties returned to court the following day, the judge announced that she did not believe that the case would need to be retried. Instead, the jurors could be brought back and repolled, and the verdict could be reinstated, the judge said. Defense counsel argued that reinstating the verdict was not possible because the judge had declared a mistrial. In addition, defense counsel moved for a dismissal of the charges, arguing that a retrial after a mistrial is possible only where the mistrial was a manifest necessity, and no such manifest necessity existed. But the judge found that defense counsel acquiesced in the mistrial by failing to object to entry of the mistrial. Even if there was no manifest necessity for declaring a mistrial, double jeopardy would not be an issue because, with the verdict reinstated, the case would not be retried, the judge concluded. She noted that the jury foreman had signed the verdict form and given it to her clerk, and that there was no written order of mistrial. The Court of Appeals reversed and remanded the case for a new trial. In a published opinion, the Court of Appeals said that the trial judge abused her discretion in declaring a mistrial. The Court of Appeals noted that the judge initially declared the mistrial without questioning the dismissed juror about whether the juror participated in the jury's deliberations. The judge had discretion to correct her error and revoke the mistrial, but did not have authority to recall the jury once it was discharged, the Court of Appeals said. The prosecution appeals.

Wednesday, October 15
Morning session

PEOPLE v. HARRIS (case no. 119862)
Prosecuting attorney: Mark Kneisel/(734) 222-6620
Attorney for defendant Erwin Harris: Gail Rodwan/(313) 256-9833
Trial court/judge: Washtenaw County Trial Court/Hon. Archie C. Brown
At issue: The unarmed defendant drove an armed accomplice to the robbery scene and directed his armed accomplice to shoot one of the robbery victims. The unarmed robber took items from another victim while his armed accomplice stood nearby. Was the unarmed robber guilty of armed robbery and possession of a firearm on a theory of aiding and abetting?
Background: Erwin Harris drove Eugene Mays to a gas station. Harris entered the gas station first, followed several moments later by Mays holding a sawed-off shotgun. During the robbery of the gas station, Harris directed Mays to "pop" the gas station attendant when the attendant would not open the register. Harris himself was unarmed. Harris robbed a customer at the gas station. Harris and May fled, with Harris driving the getaway car, but were captured by police. Following a jury trial, Harris was convicted of two counts of armed robbery, two counts of felony-firearm, and one count of fleeing and eluding police. Harris appealed, claiming that there was not enough evidence to convict him of the armed robbery and felony-firearm charges because he himself did not carry or possess the weapon during the robbery. In an unpublished split decision, the Court of Appeals upheld the convictions. The majority indicated that Harris' felony-firearm conviction could be upheld because Harris told Mays to "pop" the attendant while demanding money. The majority also said that the defendant's act of driving Mays, who was armed, to the scene, constituted assisting in carrying the firearm and retaining possession. Judge

William C. Whitbeck, dissenting, said there was no evidence that Harris helped Mays obtain or retain possession of the firearm. Harris appeals.

PEOPLE v. MOORE (case no. 120543)
Prosecuting attorney: Donald A. Kuebler/(810) 257-3854
Attorney for defendant Clarence D. Moore: Robert L. Segar/(810) 341-6520
Trial court/judge: Genesee County Circuit Court/Hon. Judith A. Fullerton
At issue: Where the defendant touched the shotgun his accomplice used to kill another man, and repeatedly urged the accomplice to shoot, saying he would do so himself, was there sufficient evidence to support the defendant's felony-firearm conviction?
Background: Clarence D. Moore and his companion DeJuan Boylston had a confrontation with two other men. Boylston had a rifle. According to a witness, Moore grabbed at the gun and repeatedly urged Boylston to shoot the other men, though Boylston did not want to do so. The witness further testified that Moore said "Give me the gun, I'll do it, I'll do it." Moore and Boylston continued this argument as they walked away, and then Boylston turned and fired several shots, killing one of the men. After a Genesee County Circuit Court jury trial, defendant Moore was convicted of first-degree premeditated murder, assault with intent to murder, and felony firearm. Judge Judith A. Fullerton sentenced Moore to life imprisonment for the first degree murder conviction, fifteen to thirty years in prison for the assault with intent to murder conviction, and a consecutive two-year prison term for the felony-firearm conviction. Moore appealed on a number of issues, stating in part that the trial judge should have dismissed the felony-firearm charge against him. There was no evidence that Moore aided and abetted Boylston's possession of a firearm, Moore argued. The evidence showed that the shotgun was always in Boylston's possession, and there was no evidence that Moore assisted Boylston in obtaining possession of the gun, Moore contended. The Court of Appeals affirmed Moore's conviction in an unpublished per curiam opinion. The panel said that there was sufficient evidence that Moore aided and abetted Boylston's possession of the firearm. Moore appeals.

MORALES v. AUTO OWNERS (case no. 122601)
Attorney for plaintiff Alice Jo Morales, Guardian and Conservator of Antonio Morales, a legally incapacitated person, a/k/a Anthony Morales: Wayne J. Miller /(248) 945-1040
Attorney for defendant Auto Owners Insurance Company: Lori M. Silsbury/(517) 374-9150
Trial court/judge: 28th Circuit Court/Hon. Charles D. Corwin
At issue: The plaintiff, who ultimately won a jury verdict in this no-fault insurance case, argues that prejudgment interest must be awarded from the date the complaint was filed until the date the judgment is satisfied. The defendant insurance company contends that the interest was suspended during the time that the plaintiff appealed a preliminary victory by the defendant.
Background: Plaintiff Alice Morales' husband, Anthony Morales, was injured in a car accident and became legally incapacitated. He supplied proof of his loss and its amount. Defendant Auto Owners Insurance Company denied personal injury protection benefits, claiming that it did not renew coverage because of Anthony Morales' driving record, and because he did not pay his premium. Morales sued for benefits. The trial court dismissed Morales' claim, and the Court of Appeals affirmed. The Supreme Court reversed and remanded the case to the trial court, finding that that an issue of fact existed whether Auto-Owners was equitably estopped from enforcing the non-renewal provision of the policy. A jury determined that Auto Owners was estopped from canceling the insurance coverage and awarded benefits to Morales. The trial court also awarded

Morales attorney fees, prejudgment interest, and no-fault penalty interest based on Auto-Owners delayed payment of benefits. Auto-Owners appealed from the award of penalty interest and the prejudgment interest. The Court of Appeals affirmed the award of no-fault penalty interest but reversed and remanded the case to the trial court to recalculate the amount of prejudgment interest. The Court of Appeals said that the trial court erred by awarding interest during the four years that the case was being appealed, because that delay was not Auto-Owners' fault. The plaintiff appeals, arguing that the prejudgment interest statute clearly states that prejudgment interest is calculated from the filing of the complaint until the judgment is satisfied.

NEAL v. WILKES (case no. 122498)
Attorney for plaintiff Julie Neal: Traci M. Kornak/(616) 458-8000
Attorney for defendant Terry Wilkes: David M. Pierangeli/(616) 977-9200
Trial court/judge: Eaton County Circuit Court/Hon. Calvin E. Osterhaven
At issue: The plaintiff was injured while riding an all-terrain vehicle on a twelve-acre lot zoned as residential land. She sued for her injuries, but the defendant contends that the Recreational Use Act (RUA) bars her claims. But a 1987 Michigan Supreme Court decision, *Wymer v. Holmes,* states that the RUA does not apply to urban, suburban, and subdivided lands. Should *Wymer* be overruled?
Background: Julie Neal injured her back while riding as a passenger on Terry Wilkes' all-terrain vehicle (ATV) on his property in the Village of Dimondale. Although the twelve-acre lot contained wooded areas, Neal's injury occurred on Wilkes' lawn. According to the township supervisor's affidavit, defendant's property was zoned as single family residential. The property was both subdivided and improved and was properly classified as either urban or suburban land. The trial granted Wilkes' motion for summary judgment and dismissed Neal's claim, finding the Recreational Use Act (RUA) prevented defendant from pursuing a cause of action against defendant. The Recreational Use Act, provides in part that "Except as otherwise provided in this section, a cause of action shall not arise for injuries to a person who is on the land of another without paying to the owner, tenant, or lessee of the land a valuable consideration for the purpose of fishing, hunting, trapping, camping, hiking, sightseeing, motorcycling, snowmobiling, or any other outdoor recreational use or trail use, with or without permission, against the owner, tenant, or lessee of the land unless the injuries were caused by the gross negligence or willful and wanton misconduct of the owner, tenant, or lessee." MCL 324.73301(1). The Court of Appeals reversed in an unpublished per curiam opinion. The Court of Appeals, citing the Michigan Supreme Court's decision in *Wymer v. Holmes*, 429 Mich. 66 (1987), said that the RUA did not apply to residential property. Wilkes appeals.

Afternoon session

DESSART v. BURAK (case no. 122238)
Attorney for plaintiffs William C. Dessart and Sheila A. Dessart: Jonny L. Waara/(906)265-6173
Attorney for defendants Lynn Marie Burak and Bryan R. Burak: Daniel R. DeGrand/(906)786-6009
Trial court/judge: Delta County Circuit Court/Hon. Stephen T. Davis
At issue: What are "assessable costs" under Michigan Court Rule (MCR) 2.403(O)(3)? If "assessable costs" includes costs from the beginning of the litigation until the jury verdict, then

the defendants owe sanctions to the plaintiffs. If the term includes only costs from the beginning of the litigation to the time the case was evaluated, then no sanctions are due. A second question is whether attorney fees are an assessable cost.
Background: This case arose out of an automobile-third-party negligence action. Following mediation, the case was evaluated at $120,000. Plaintiffs William C. Dessart and Sheila A. Dessart accepted this evaluation, but defendants Lynn Marie Burak and Bryan R. Burak rejected it. A jury returned a $100,000 verdict for the plaintiffs. The plaintiffs filed a motion requesting mediation sanctions. On April 3, 2001, the trial judge entered an order denying mediation sanctions. The plaintiffs appealed. The Court of Appeals affirmed the trial judge's decision. Under MCR 2.403(O)(3), which governs mediation in circuit court, "a verdict must be adjusted by adding to it assessable costs and interest on the amount of the verdict from the filing of the complaint to the date of the case evaluation, and, if applicable, by making the adjustment of future damages as provided by MCL 600.6306. After this adjustment, the verdict is considered more favorable to a defendant if it is more than 10 percent below the evaluation, and is considered more favorable to the plaintiff if it is more than 10 percent above the evaluation." If the adjusted verdict is more favorable to the plaintiffs, then the defendants must pay mediation sanctions because they rejected the evaluation. The plaintiffs argue that "assessable costs" include costs from the beginning to the litigation until the jury verdict, including a reasonable attorney fee from the date of mediation through the verdict. The Court of Appeals disagreed and affirmed the trial judge's ruling in a published opinion. The plaintiffs appeal.

MANN v. SHUSTERIC ENTERPRISES (case no. 120651)
Attorneys for plaintiff Roger Mann: James D. Brittain, Martin N. Fealk/(313) 383-5500
Attorney for defendant Shusteric Enterprises, Inc.: John P. Jacobs/(313) 965-1900
Attorney for amicus curiae Quick-Sav Food Stores, LTD. and Quick-Tracker Management, Inc.: John A. Chasnis/(989) 793-8740
Trial court/judge: Wayne County Circuit Court/Hon. Sharon Tevis Finch
At issue: The plaintiff, who had been drinking, slipped and fell in the bar parking lot. He sued the bar under a theory of premises liability and won a jury verdict. The bar argues that Michigan's dramshop act should apply to bar the plaintiff's claim because he was visibly intoxicated and therefore not an "innocent party." The dramshop act states that it "provides the exclusive remedy for money damages against a licensee arising out of the selling, giving, or furnishing of alcoholic liquor." Is there a premises-liability exception to the exclusive remedy provision of the dramshop act?
Background: Plaintiff Roger Mann slipped and broke his ankle in a snowy bar parking lot after drinking at the bar and becoming intoxicated. He sued the bar on a premises liability theory. A jury returned a verdict in Mann's favor, although the jury found that he was 50 percent comparatively negligent. Michigan's Dram Shop Act provides in part that: "(10) Actions for loss of support, services, etc. The allegedly visibly intoxicated person shall not have a cause of action pursuant to this section . . . (11) Exclusive remedy. This section provides the exclusive remedy for money damages against a licensee arising out of the selling, giving, or furnishing of alcoholic liquor." The bar appealed, arguing that Mann's suit should have been barred under the exclusive remedy provision of the Dram Shop Act, because Mann was "visibly intoxicated" at the time of his accident. The Court of Appeals disagreed and affirmed the trial verdict, but remanding for modification of the judgment to reflect that an additional $5,000 collateral source payment should be deducted from the award of past economic damages. The bar appeals.

PERKOVIC v. BROWN (case no. 123171)
Attorney for plaintiff Tomo Perkovic: Gerald A. Gordinier/(248) 852-2111
Attorney for defendant Aaron William Brown: John A. Lydick/(248) 646-5255
Trial court/judge: Macomb County Circuit Court/Hon. Deborah A. Servitto
At issue: Following an auto accident, the plaintiff sued the defendant for negligence in speeding and running a red light. Was the trial court correct in entering summary disposition in favor of the defendant and dismissing the suit?
Background: The plaintiff, Tomo Perkovic, and defendant Aaron William Brown were involved in a two-car collision as Perkovic was making a left turn at an intersection with a traffic light. Perkovic sued, contending that Brown was negligent. At his deposition, Perkovic testified that Brown was speeding at the time of the accident and that Brown ran a red light. Perkovic testified, however, that he never saw Brown before the collision and had no idea how fast Brown was going. Perkovic also testified at his deposition that the light at the intersection was yellow as he last saw it, and that he never saw the light turn red. In addition, Perkovic testified that, other than Brown, he did not know of any witnesses to the accident. Brown filed a motion for summary disposition, arguing that, based on Perkovic's own deposition testimony, there was no genuine issue as to any material fact that the accident was not caused by Brown's negligence. The trial granted the motion and dismissed the case. Perkovic appealed, and the Court of Appeals reversed and remanded the case to the trial court. In an unpublished per curiam opinion, the Court of Appeals said that Perkovic was partly at fault for the accident, but that Brown had a duty to try to avoid the collision "once it became clear that plaintiff 'was going to challenge or obstruct his right-of-way' …. whether [Brown] he was negligent in failing to do so cannot be determined due to the lack of evidence. Therefore, the trial court erred in ruling that defendant was entitled to judgment as a matter of law." Brown appeals.

Thursday, October 16
Morning session

TWICHEL v. MIC GENERAL INSURANCE (case no. 121822)
Attorney for plaintiff Mark Todd Twichel, Personal Representative of the Estate of Brady S. Sies, Deceased: Thomas W. Waun/(810) 695-6100
Attorney for defendant MIC General Insurance Corporation: Raymond W. Morganti/(248) 357-1400
Trial court/judge: Genesee County Circuit Court/Hon. Archie L. Hayman
At issue: Brady S. Sies paid part of the purchase price of a pickup truck; he was to pay the remainder at a later date. Sies had possession of the pickup for five days when he was involved in a fatal accident. His estate sought personal protection benefits and uninsured motorist benefits from the defendant insurance company. The insurance company contends that it is not liable for benefits because Sies was not the owner of the vehicle. Was Sies the owner of the vehicle either for purposes of Michigan's no-fault statute or under the insurance policy? Does a statutory exclusion bar the estate's claim for personal protection benefits? Does the language of the insurance policy preclude uninsured motorist benefits?

Background: Brady S. Sies gave his friend Matthew Roach $300 for a pickup truck and took possession of it. The sale price was $600, and Sies was to pay the remainder at a later date. Roach did not sign title over to Sies because Sies had not paid the full purchase price. Roach told Sies that the pickup was uninsured and that it was Sies' responsibility to get insurance. Five days later, Sies was killed in an accident while driving the pickup truck. At the time of the accident, Sies was living with his grandfather, who had the policy issued by defendant MIC General Insurance Corporation. Sies' estate sued the insurance company. A circuit court judge held that Sies was covered by the policy, both as to personal protection benefits and uninsured motorist benefits. The Court of Appeals agreed and affirmed in a published opinion. The insurance company appeals, arguing that, under Michigan's no-fault statute, Sies' estate may not recover personal protection benefits because he was the owner of an uninsured vehicle that was not listed in the policy. The statute defines "owner" as "A person renting a motor vehicle or having the use thereof, under a lease or otherwise, for a period that is greater than 30 days" or "A person who holds legal title to a vehicle, other than a person engaged in the business of leasing motor vehicles who is the lessor of a motor vehicle pursuant to a lease providing for the use of the motor vehicle by the lessee for a period that is greater than 30 days," or "A person who has the immediate right of possession of a motor vehicle under an installment sale contract." The estate argues that Sies was not the owner, because he had the pickup for less than 30 days. The insurance company contends that Sies was the owner under the no-fault statute, because he had possession of the pickup under an installment sale contract. The insurance company also argues that Sies' estate may not recover uninsured motorist benefits under the policy because he "owned" the vehicle. The policy provides in part "We do not provide Uninsured Motorists Coverage for 'bodily injury' sustained …. By an 'insured' while occupying, or when struck by, any motor vehicle that is owned by that 'insured' which is not insured for this coverage under this policy." The estate contends that the term "owned" is ambiguous and should be construed in favor of the insured.

PEOPLE v. BOYD (case no. 118021)
Prosecuting attorney: Terrance K. Boyle/(313) 224-5794
Attorney for defendant Eric Boyd: Paul C. Louisell, Susan R. Chrzanowski/(586) 573-8900
Trial court/judge: Wayne County Circuit Court/Hon. Warfield Moore, Jr.
At issue: The trial judge ruled that the defendant's statement to police, "I am taking the fifth on that one" could be used in evidence. The defendant did not testify, and the statement was not introduced. Does the trial judge's alleged error require reversal of the defendant's conviction?
Background: Eric Boyd was charged with first-degree criminal sexual conduct; a 12-year-old girl testified that Boyd sexually assaulted her. Boyd was interviewed by a police officer, who asked how many times Boyd had had sex with the child. Boyd responded, "I am taking the fifth on that one" and no further questions were asked. Defense counsel moved to exclude that statement from being introduced into evidence at trial, but the trial judge said he would allow it. Boyd did not testify at trial and the statement was not introduced. A jury found Boyd guilty of the lesser crime of second-degree criminal sexual conduct. The trial judge sentenced Boyd to 10 to 15 years in prison. Boyd appealed, but the Court of Appeals affirmed in an unpublished per curiam opinion. The Court of Appeals said that the judge erred by ruling that the "taking the Fifth" statement could come into evidence. However, Boyd did not testify and the statement was

not used, and also the evidence against Boyd was overwhelming, the Court of Appeals said. Boyd appeals.

KNUTH v. KNUTH (case no. 123150)
Attorney for plaintiff Sandra M. Knuth: Michael P. Kavanaugh/(586) 776-1700
Attorney for defendant Thomas E. Knuth: Marguerite Ann Hanes/(586) 493-9080
Trial court/judge: Macomb County Circuit Court/Hon. Peter J. Maceroni
At issue: The plaintiff-wife was living in Tennessee, and moved to Michigan with her son. Less than 180 days later, she filed for divorce and sought custody of the child. The defendant-husband filed a counter-complaint in Tennessee, but the Michigan court accepted jurisdiction over the divorce and the custody matter. Did the Michigan court have jurisdiction?
Background: Plaintiff Sandra M. Knuth left her marital home in Tennessee with her son and, while visiting her parents in Michigan, filed for divorce. The applicable Michigan statute provides that "A judgment of divorce shall not be granted by a court in this state in an action for divorce unless the complainant or defendant has resided in this state for 180 days immediately preceding the filing of the complaint …." Defendant Thomas E. Knuth filed a counter action in Tennessee. The Michigan court held that it had jurisdiction, saying that Sandra Knuth had "resided" in Michigan for the required period of time. Noting that Thomas E. Knuth was in the Army and that the couple had moved frequently during their 13 years of marriage, the trial judge said that Sandra Knuth's contacts with Michigan were sufficient to establish her ongoing residency. Both the child and mother had significant connections to Michigan and the mother was the first to file, the trial judge indicated. In an unpublished per curiam decision, the Court of Appeals affirmed the trial court's ruling. Thomas Knuth appeals, contending that state law demands actual residence of the plaintiff in Michigan for 180 days before filing a divorce complaint. Sandra Knuth contends that she always considered herself a Michigan resident, and that, as she moved with her husband from one military assignment to another, her intent was always to return to Michigan, where her family resided. She notes that she registered to vote in Michigan in 1992 and maintained her fitness club membership in Michigan throughout the years she lived elsewhere.

Afternoon session

PRESERVE THE DUNES, INC. v. MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY (case nos. 122611, 122612)
Attorney for plaintiff Preserve the Dunes, Inc.: Jeffrey K. Haynes/(248) 645-9400
Attorney for defendant Technisand, Inc.: James H. Geary/(269) 382-9707
Attorney for defendant Michigan Department of Environmental Quality: James R. Piggush/(517) 373-7540
Attorneys for amicus curiae Lake Michigan Federation: David P. Hackett, Eric W. Sievers/(312) 861-8000, Laurel O'Sullivan/(312) 939-0838
Attorneys for amicus curiae Michigan Manufacturers Association: F.R. Damm, Peter D. Holmes, Paul C. Smith/(313) 965-8300
Attorneys for amicus curiae Michigan Aggregates Association: Kenneth W. Vermeulen, John J. Bursch/(616) 752-2000

Attorneys for amicus curiae West Michigan Environmental Action Council, Inc.: James P. Enright, Alan Bennett/(616) 459-1971
Trial court/judge: Berrien County Circuit Court/Hon. Paul L. Maloney
At issue: Can the plaintiff use the Michigan Environmental Protection Act to obtain relief on its claim that the Michigan Department of Environmental Quality improperly granted a permit to extend sand mining operations into a dune area? If the plaintiff can challenge the permit, was the permit improperly granted?
Background: Plaintiff Preserve the Dunes, Inc., a citizens' group, filed a complaint seeking declaratory and injunctive relief. Preserve the Dunes claimed that the Michigan Department of Environmental Quality (DEQ) improperly granted defendant Technisand a permit to mine sand in a designated critical dune area, and that such action would impair or destroy that natural resource. Following a bench trial, the trial judge found that Preserve the Dunes failed to show that any adverse impact on natural resources resulting from sand mining would rise to the level of impairment or destruction of natural resources within the meaning of the Michigan Environmental Protection Act (MEPA, part 17 of the Natural Resources and Environmental Protection Act (NREPA). The Court of Appeals reversed in a published decision. The Court of Appeals held that the DEQ violated part 637 of the NREPA, the Sand Dune Mining Act (SDMA), when it issued a permit to Technisand. The appellate court also held that, under the circumstances, the SDMA supplies the substantive standard for determining whether the MEPA was violated. The Court of Appeals found that there were no relevant factual disputes, concluded that the trial court erred in denying Preserve the Dunes' motion for summary disposition, and remanded for entry of an order granting summary disposition to Preserve the Dunes. Technisand and the DEQ appeal, arguing in part that MEPA does not give third parties the ability to challenge a DEQ permit decision. The defendants also contend that the Court of Appeals used the wrong standard for determining whether the MEPA was violated.

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